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EX PARTE OR LATE FILED

December 22, 1997

Magalie R. Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RECEIVED

DEC 22 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: CC Docket No. 97-208

Dear Ms. Salas:

On behalf of the Competitive Telecommunications Association ("CompTel"), please take notice that on December 18, 1997, we met with Thomas Power, Legal Advisor to Chairman Kennard to discuss CompTel's position in this docket. Representing CompTel were myself from Kelley Drye & Warren LLP, Joseph Gillan, economic consultant to CompTel, and Genevieve Morelli, Executive Vice President and General Counsel of CompTel. The documents attached at Tab A summarize the arguments presented at the meeting.

In addition, CompTel also presented an analysis of the relative profitability of serving residential customers in South Carolina using unbundled network elements and service resale. The analysis, which is appended at Tab B, is based on revenue information for a "typical" residential customer submitted by BellSouth in sworn testimony before the South Carolina PSC, and is updated to reflect the interim network element pricing adopted by the South Carolina Commission. It clearly demonstrates that the most cost-effective way for new entrants to serve residential customers is through combinations of UNEs, not resale of BellSouth's end user services. Thus, the path to robust residential competition depends upon new entrants having cost-effective and non-discriminatory access to UNEs that may be combined to produce competing services.

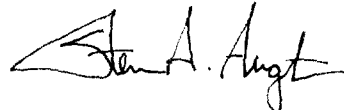
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KELLEY DRYE & WARREN LLP

Magalie R. Salas, Secretary
December 22, 1997
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An original and one copy of this notice are provided for inclusion in the public record.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven A. Augustino". The signature is stylized with a large initial "S" and a cursive "Augustino".

Steven A. Augustino

Attachments

cc: Mr. Power
Chairman Kennard
Commissioner Ness
Commissioner Tristani
Commissioner Furchtgott-Roth
Commissioner Powell

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Application by BellSouth Corp. et al.
for Provision of In-Region,
InterLATA Services in South Carolina

)
)
)
) CC Docket No. 97-208
)
)
)

**EX PARTE PRESENTATION OF THE
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION**

December 18, 1997

BELLSOUTH MAY NOT PROCEED UNDER TRACK B

- **Track A is the Primary Vehicle for Satisfying Section 271**

Track B is a narrow exception responding to a theoretical concern raised by the BOCs. Existence of actual competition under Track A is the most reliable evidence that local markets are open.

Track A necessarily involves a period where competitors are pursuing facilities-based service but have not yet begun to provide competing services.

A narrow interpretation of Track B's requirements preserves a BOC's incentive to cooperate with a CLEC's efforts to provide facilities-based service. Track B should be available only if, through no fault of the BOC's, no competitors are seeking to enter the market.

- **BellSouth Clearly Has Received Multiple Requests for Interconnection and Access**

With 26 interconnection agreements, BellSouth cannot credibly claim that it never received a request that, if implemented, would lead to facilities-based service under Track A.

UNE-based requests, *provided* UNEs give the equivalent of ownership (including the ability to combine elements efficiently), require a BOC to proceed under Track A, not Track B.

**BELLSOUTH MAY NOT PROCEED UNDER TRACK B
(CONT'D)**

- **Several CLECs are Diligently Pursuing Facilities-Based Service in South Carolina**

Both ACSI and DeltaCom are proceeding to deploy facilities by early 1998.

Both ACSI and DeltaCom are within the "ramp up" period the Commission found was reasonable in the *SBC Oklahoma* Order. BellSouth filed 11 months (at most) after signing an agreement with ACSI and six months after the DeltaCom agreement.

ACSI and DeltaCom's plans to serve residential customers parallel the evidence in the *SBC Oklahoma* proceeding. Like Brooks Fiber in Oklahoma, these carriers will serve residential customers when it makes economic sense and are "exploring opportunities" to do so.

- **There is no Basis to Conclude that CLECs Have Failed to Negotiate in Good Faith or Failed to Comply with an Implementation Schedule**

There is no finding that competing providers have failed to negotiate in good faith or failed to comply with an implementation schedule contained in an agreement.

BellSouth's own actions have erected a barrier to entry in the residential market. The lack of competition is directly attributable to BellSouth, not to CLEC's alleged delay.

BELLSOUTH HAS CREATED A BARRIER TO RESIDENTIAL COMPETITION

- **BellSouth's Unnecessary Separation of Network Elements has 5 Principal Effects**

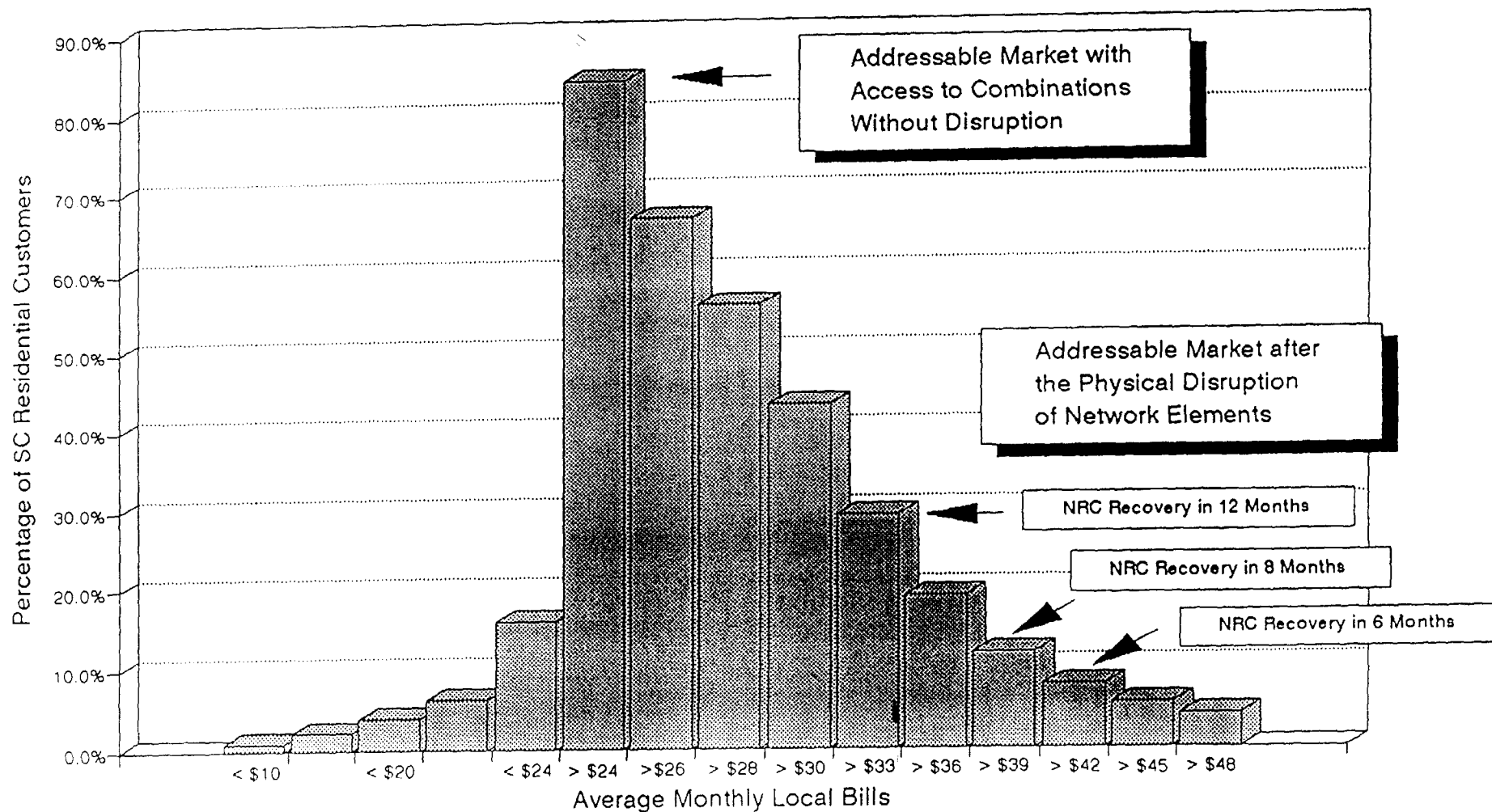
1. Additional charges by BellSouth to separate elements
2. Additional costs to the CLEC to combine elements
3. Otherwise avoidable service outages when customers change carriers
4. Increased risk of error
5. Unreasonable delay in switching customers

- **BellSouth's Policy Precludes Competition for Most Residential Customers**

But for BellSouth's insistence on unnecessary separation, at least 85 percent of South Carolina residential customers would be potential targets for service through BellSouth UNEs.

With BellSouth's policy, however, as little as 8 percent are potential targets.

The Forced Separation of Network Elements Creates a Barrier to Residential Competition



BELLSOUTH MUST PROVIDE CLECS THE ABILITY TO COMBINE NETWORK ELEMENTS

- SGAT is insufficient to demonstrate that CLECs are able to combine elements as permitted under Section 251 of the Act. BellSouth offers only two vague and inadequate options to combine elements: (1) it will physically deliver UNEs to a collocation cage "where possible" or (2) it promises to negotiate other arrangements at some future time.
- The collocation requirement inherent in option (1) is inconsistent with the FCC's conclusion (upheld by *Iowa Utilities Board*) that a CLEC can purchase *all* of the necessary elements from BellSouth and is itself a barrier to entry. BellSouth continues to treat services composed entirely of BellSouth UNEs as resale.
- BellSouth's promise to negotiate a "glue charge" or other arrangements (option (2)) is illusory. BellSouth does not have the concrete and specific obligation sufficient to conclude that BellSouth provides CLECs with the ability to combine UNEs.

**BELLSOUTH ALSO MUST PROVIDE
NONDISCRIMINATORY ACCESS FOR PURPOSES
OF COMBINING NETWORK ELEMENTS**

- After *Iowa Utilities Board*, BellSouth *either* must combine UNEs *or* provide nondiscriminatory access so the CLEC can combine them. Having chosen not to provide pre-existing combinations, BellSouth fails to provide nondiscriminatory access.
- Except in rare circumstances, separation should be accomplished through **automated processes** which also permit automated configuration by CLECs. Where BellSouth can configure service through software changes, CLECs must also be able to do so.
 - Because BellSouth insists on physically separating UNEs, it is evading the FCC's requirement that local service changes requiring only a software modification be comparable to the PIC change process.
- BellSouth must provide **supervised access** to the network so that CLECs can combine UNEs without establishing collocation arrangements.
 - BellSouth claim that access will threaten network integrity should be summarily dismissed. *Iowa Utilities Board* is predicated on the conclusion that ILECs such as BellSouth will provide nondiscriminatory access that enables such combinations.
 - CLEC access cannot be nondiscriminatory unless it is at parity with the access BellSouth provides to its own personnel.

B

**Residential Competition: South Carolina
Resale Versus Network Elements**

Resale and unbundled network elements provide fundamentally different business opportunities. Resale limits the entrant to offering service-clones of the incumbent, with little opportunity for retail price competition and no opportunity for access competition. Network elements, in contrast, fully establish the entrant as the provider of local exchange and exchange access services, with the flexibility to introduce new and innovative pricing plans and services.

Resale Option

	Revenue ¹	Cost ²	Profit	Margin
Average Rate	\$16.38	\$14.33		
Vertical Service	\$4.01	\$3.51		
IntraLATA Toll	\$3.46	\$3.03		
Total	\$23.85	\$20.87	\$2.98	14.3%

Network Element Option

	Revenue ¹	Cost ³	Profit	Margin
Retail Services				
Average Rate	\$16.38			
Vertical Service	\$4.01			
IntraLATA Toll	\$3.46			
Access Services				
Interstate Access	\$2.95			
Intrastate Access	\$5.55			
SLC	\$3.50			
	\$35.85	\$24.34	\$11.51	47.3%

¹ Typical Residential Revenue, BellSouth Testimony of Alphonso Varner, South Carolina Docket 96-358-C, Exhibit AJV-3.

² BellSouth Ex Parte Study (Effective Resale Discount of 12.5%).

³ Affidavit of Joseph Gillan, CC Docket 97-208.

ILLUSTRATIVE **South Carolina Example of Unbundled Elements**

(Statewide Average Rates)

End-User Generated Recurring Revenues

	Business Lns	Residence
Avg Rate	\$41.33	\$16.38
Hunting	\$5.48	\$0.00
Vert. Svc.	\$2.74	\$4.01
IntraLATA Toll	\$5.48	\$3.46
InterLATA IntraState Toll Access	\$6.46	\$2.95
InterLATA InterState Toll Access	<u>\$12.85</u>	<u>\$5.55</u>
Subtotal	\$73.41	\$32.35
SLC	<u>\$5.75</u>	<u>\$3.50</u>
Total Retail	\$79.16	\$35.85
Total less Access and SLC	\$85.01	\$23.86

Resale

FCC Resale @ 10.4%(R), 9.2%(B)	\$49.65	\$21.37
SLC	\$5.75	\$3.50
IntraState and InterState Access	<u>\$18.40</u>	<u>\$8.50</u>
Total Resale Revenues	\$74.10	\$33.37

Unbundled Network Elements - AT&T Proposal

	Business	Residence
Loop	\$14.88	\$14.88
Switch Port	\$1.29	\$1.29
Hunting	\$0.00	\$0.00
Vert. Svc	\$0.00	\$0.00
Local Usage	\$2.05	\$3.30
IntraLATA Toll	\$0.15	\$0.12
InterLATA IntraState Toll	\$0.72	\$0.39
InterLATA InterState Toll	<u>\$2.73</u>	<u>\$1.17</u>
Subtotal	\$21.82	\$21.15
SLC	<u>\$0.00</u>	<u>\$0.00</u>
Total	\$21.82	\$21.15

Unbundled less Resale	(\$52.28)	(\$12.22)
Access Lines	288,756	905,239

Contribution Impact with 10% access line loss:	(\$30,135,101)
Contribution Impact with 20% access line loss:	(\$60,270,202)
Contribution Impact with 30% access line loss:	(\$90,405,303)
Contribution Impact with 40% access line loss:	(\$120,540,405)

Notes:

1. Average rev. for vertical svc & intraLATA toll computed from Dec. '95 actuals
2. SLC rate for business is weighted average of single line and multi-line SLCs.
3. SLC collected from resold lines, but not from unbundled network elements.
4. Retail revenues from vertical svc. and intraLATA toll will be significantly higher for the competitor's target market.
5. The unbundled business & residence average loop rate shown is from the Hatfield Model proposed by AT&T.
6. Total Switching @ \$0.00